

4447-103017-US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
Before the Board of Patent Appeals and Interferences

In the application of : Richard Fuksa
Serial No. : 10/752,651
Filed : January 7, 2004
For : PIN INSERT
Examiner : GRAIG M. SCHNEIDER
Art Unit : 3753
Confirmation No. : 4106
Customer number : 24628

REPLY BRIEF IN RESPONSE TO EXAMINER'S ANSWER
OF FEBRUARY 22, 2008

Honorable Director of Patents and Trademarks
P.O. Box 1450
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REPLY BRIEF

This Appeal is from the Examiner's final Office Action of February 13, 2007.

This is a REPLY to the Examiner's Answer filed on February 22, 2008.

An appropriate Request for Oral Hearing and a request for a two month extension to June 22, 2008 to file this Reply were filed on April 21, 2008.

(i) Real party in interest

This application is assigned to Thomas Industries, Inc. of Sheboygan, Wisconsin, who is the real party in interest.

(ii) Related Appeals and Interferences

There are no known appeals or interferences which may affect or have a bearing on this appeal.

(iii) Status of claims

The statement of the status of claims contained in the Appeal brief is correct.

(iv) Status of amendments

All amendments having been filed before the Final Action have been entered and considered by the Examiner.

(v) Summary of claimed subject matter

The summary of claimed subject matter is as contained in the brief and considered correct by the Examiner's Answer.

(vi) Grounds of rejection to be reviewed on appeal

The grounds of rejection to be reviewed on appeal are set forth in the brief and considered correct by the Examiner's Answer.

The Appellant agrees that the rejection of claims 4-8 is not to be reviewed independently and is based on the allowance of claim 1.

The Appellant agrees that what the Examiner's answer sets forth in paragraph 9, entitled Ground of Rejection, is the same as paragraphs 3-9 of the FINAL rejection of February 15, 2007.

(vii) Argument

The Appellant's arguments to the Final rejection and the Examiner's Answer noted above are set forth in Appellant's Brief.

The primary reference, Wise, shows a pin 32 that holds the flexible valve flap 33 against a valve seat (column 2 lines 22 & 23). The body of the pin 32 is a cylindrical shaft extending from the head.

The dowel of the secondary reference Miller has no head and could not be used to hold the flexible valve flap of Wise. Further Miller states in column 1 line 62 to column 2 line 4 that his dowel requires a component opening that that can accept his dowel and he provides a tool that can do this.

The Examiner without any suggestion from Wise or Miller wants to take the dowel of Miller and use that instead of the cylindrical shaft of Wise.

It must be noted that as declared by Richard Fuksa, a person skilled in the art, that the substitution of the dowel construction for the cylindrical shaft of Wise would not be obvious to him. Fuksa made this declaration noting that willful false statements are punishable by fine or imprisonment. It is not appropriate for the Examiner to state that Fuksa's declaration is suspicious, or to imply that Fuksa, a person skilled in that art, is making false statements. If a person skilled in the art would not make the Examiner's combination without first having an intimate knowledge of Appellant's invention, then certainly it would not be obvious to a person of ordinary skill in the art.

It is further noted that nowhere in Miller is it stated that in Fig. 4 there is or can be "a tooth that shears material of the valve plate as the pin is inserted". In fact Miller states that shearing is not a function of his dowel. See column 1 line 62 to column 2 line 4. The Examiner is making an assumption that the structure of Miller is constructed to shear a valve plate. The Examiner, after reading Appellants' application, is reading into Miller something that is neither there nor suggested by Miller nor suggested by Wise. That is why Richard Fuksa declared that substitution suggested by the Examiner would not be obvious to him a person skilled in the art let alone a person of ordinary skill in the art.

CONCLUSION

Appellant makes the foregoing submission in response to the Examiner's Answer and in support of Appellant's Appeal Brief submissions which are entirely pertinent to Appellant's appeal against the rejection of the current claims of this application. Therefore, the foregoing should be considered in conjunction with the submissions of Appellant's Appeal Brief.

The rejection of claims is in error and the Examiner should be reversed. Such action is solicited.

June 19, 2008

Respectfully submitted,



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(viii) Claims Appendix

The copy of the appealed claims are contained in the Appendix to the Appellant's brief and considered correct by the Examiner's Answer.

(ix) Evidence Appendix

The 37 C.F.R. 1.132 Declaration of Richard Fuksa was submitted with Appellant's brief and no new evidence is submitted